

THE NEW MCP: ADEQUATELY REGULATED FACT SHEET 1

OVERVIEW OF ADEQUATELY REGULATED REQUIREMENTS

SUBPART A 310 CMR 40.0110

The Massachusetts Department of Environmental Protection (DEP) has redesigned the Waste Site Cleanup Program, and has revised the rules for reporting, assessing, and cleaning up releases of oil and hazardous materials. The revised Massachusetts Contingency Plan (310 CMR 40.0000, "1993 MCP"), which contains these rules, became fully effective on October 1, 1993. This fact sheet provides an overview of the adequately regulated provisions of the MCP, and describes the types of sites that may be adequately regulated, and the provisions of the MCP that do and do not apply.

The 1993 MCP provides opportunities and incentives for those who are legally responsible to meet their obligations as efficiently and effectively as possible. The 1988 MCP fully applied to cleanups at Environmental Protection Agency (EPA) Superfund sites and facilities permitted by other DEP Bureaus or the EPA unless DEP affirmatively waived those requirements. DEP rarely waived the 1988 MCP requirements due to a lack of staff and clear guidance regarding such waivers. As a result, some permitted facilities became subject to two sets of cleanup requirements and oversight conducted, in some cases, by two regulatory authorities. One of the efficiencies provided by the 1993 MCP is the adequately regulated provisions (310 CMR 40.0110). The adequately regulated provisions are designed to reduce regulatory overlap and duplication. These provisions limit the applicability of the MCP in cases where response actions are adequately overseen by other authorities. DEP believes the adequately regulated provisions will result in less duplication of effort by both the government and the private sector.

This fact sheet provides an overview of the adequately regulated provisions of the MCP. Fact Sheets 2, 3, 4 and 5 address the specific requirements for certain types of sites or response actions that may be considered adequately regulated, as discussed below.

PURPOSE OF THE ADEQUATELY REGULATED PROVISIONS OF THE MCP: DEP included the adequately regulated provisions in the MCP in order to avoid duplication of regulatory procedures and oversight, thus streamlining site cleanup at sites subject to multiple jurisdictions. Regardless of the regulatory procedures followed,



DEP expects all sites with releases or threats of release of oil and hazardous materials to be cleaned up to an equivalent extent with appropriate opportunities for public involvement.

SITES AND RESPONSE ACTIONS THAT MAY BE ADEQUATELY REGULATED: The MCP identifies certain types of sites and/or response actions that may be considered adequately regulated, and indicates which provisions of the MCP are applicable for each. The sites and/or response actions that may be adequately regulated are:

- ▶ Federal Superfund Sites or other removal actions taken in accordance with CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980 - the Federal Superfund Program) (See Adequately Regulated Fact Sheet 2);
- ▶ Federal Hazardous and Solid Waste Act Amendments of 1984 (HSWA) Corrective Actions under the Resource Conservation and Recovery Act (RCRA) (See Adequately Regulated Fact Sheet 3);
- ▶ Response actions at Treatment, Storage, and Disposal Facilities (TSDs) and Land Disposal Facilities (LDFs)¹ (See Adequately Regulated Fact Sheet 4); and
- ▶ Response actions at Solid Waste Management Facilities (See Adequately Regulated Fact Sheet 5).

WHAT DOES IT MEAN TO BE ADEQUATELY REGULATED? Response actions are adequately regulated if they are conducted according to the procedures of one of the regulatory authorities listed above. For instance, the cleanup of a hazardous waste treatment, storage or disposal facility (TSDF) would be considered adequately regulated provided the response actions are conducted in compliance with relevant licenses, permits, approvals or orders issued by DEP's Bureau of Waste Prevention (BWP), and certain provisions of the MCP.

The specific MCP provisions that adequately regulated sites must follow depend on the type of site or response action. The specific requirements for each type of site or response action are described in Adequately Regulated Fact Sheets 2 through 5. Table 1 summarizes some of the important adequately regulated provisions

¹ hazardous waste Treatment, Storage, and Disposal Facilities (TSDs) and Land Disposal Facilities (LDFs) that are subject to the requirements of 310 CMR 30.800 Licensing Requirements and Procedures or 310 CMR 30.099(6) Transition Provisions (Interim Status)

FOR MORE INFORMATION: Call the DEP InfoLine (from area code 617 and from outside Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0044.

CERCLA sites Jay Naparstek (BWSC) 617-292-5697

Solid Waste Management Facilities - James Doucette (BWP) 617-292-5868

General Questions Stephen Winslow (BWSC) 574-6838

TABLE 1
SUMMARY OF ADEQUATELY REGULATED PROVISIONS

	CERCLA	PERMITTED HSWA CORRECTIVE ACTIONS	HSWA CORRECTIVE ACTIONS PENDING PERMIT APPEAL	SOLID WASTE FACILITIES	21C FACILITIES
Sites that qualify	Federal Superfund sites or CERCLA removal actions	Federal HSWA Corrective actions under RCRA	Federal HSWA Corrective actions under RCRA	Response actions in accordance with solid waste permit or approval	Response actions at 21C TSDs and LDFs
Oversight authority	EPA	EPA	DEP for IRAs; DEP or LSP Subject to Audit for RAMs. URAMs, Phases III & IV	DEP Bureau of Waste Prevention*	DEP Bureau of Waste Prevention*
MCP Notification Required?	Yes, 2 and 72 hour releases	Yes, 2 and 72 hour releases	Yes, 2 and 72 hour releases and substantial release migration	Yes, 2 and 72 hour releases	Yes, 2 and 72 hour releases
LSP Required?	No, except for management of remediation waste	No, except for management of remediation waste	Yes	No, except for management of remediation waste	No, except for management of remediation waste
IRA Requirements	No specific requirements	MCP requirements for notice, IRA plans and IRACs apply. IRAs not required for Conditions of Substantial Release Migration. DEP approval not required if EPA is approving IRA	MCP requirements for notice, IRA plans, IRACs and DEP approval apply.	MCP requirements for notice, plans and approval, etc. apply*. IRAs not required for Conditions of Substantial Release Migration.	MCP requirements for notice, plans and approval, etc. apply*. IRAs not required for Conditions of Substantial Release Migration.
MCP Ranking, Permit and MCP Phase Report Requirements	None	Submit HSWA reports to DEP; No requirements for MCP ranking, permit or reports	Submit HSWA reports to DEP; MCP ranking, permit and reports required to implement remedy during pendency of appeal	Submit solid waste reports to DEP; no MCP ranking, permit or reports required	Submit response action reports according to 21C regs or permit to DEP; No MCP ranking, permit or reports required

* BWSC and BWP will coordinate oversight of IRAs

TABLE 1
SUMMARY OF ADEQUATELY REGULATED PROVISIONS

Cleanup requirements	Incorporated into ARARS	MCP risk characterization and risk management requirements apply; for landfills, requirements apply only outside landfills; no Response Action Outcome (RAO) statement required	MCP risk characterization and risk management requirements apply; for landfills, requirements apply only outside landfills; no RAO statement required	MCP risk characterization and risk management requirements apply; for landfills, requirements apply only outside landfills; no RAO statement required	MCP risk characterization and risk management requirements apply; for landfills, requirements apply only outside landfills; no RAO statement required
Public Involvement Requirements	Follow CERCLA public involvement procedures	MCP Notice for Imminent Hazard, RAM, Phase Completion, Field Work involving respirators or Level A, B or C Protection; Legal notices analogous to MCP; Public Involvement Plan sites will have additional site-specific requirements	MCP Notice for Imminent Hazard, RAM, Phase Completion, Field Work involving respirators or Level A, B or C Protection; Legal notices analogous to MCP; Public Involvement Plan sites will have additional site-specific requirements	MCP Notice for Imminent Hazard, RAM, Phase Completion, Field Work involving respirators or Level A, B or C Protection; Legal notices analogous to MCP; Public Involvement Plan sites will have additional site-specific requirements	MCP Notice for Imminent Hazard, RAM, Phase Completion, Field Work involving respirators or Level A, B or C Protection; Legal notices analogous to MCP; Public Involvement Plan sites will have additional site-specific requirements
Subject to Audit	No	Yes	Yes	No	No
Relevant Fact Sheet	#2	#3	#3	#4	#5

TABLE 2 IMPORTANT APPLICABLE MCP PROVISIONS FOR FEDERAL CORRECTIVE ACTIONS UNDER HSWA, AND RESPONSE ACTIONS AT 21C FACILITIES AND SOLID WASTE MANAGEMENT FACILITIES	
·	Certification of submittals by the person conducting the response action (310 CMR 40.0009)
·	Environmental sample collection and analysis (310 CMR 40.0017)
·	Health and safety procedures (310 CMR 40.0018)
·	Management procedures for remediation waste, including the Bill of Lading process (310 CMR 40.0030)
·	Air emission control measures (310 CMR 40.0040)
·	Application of the Best Response Management Approach Standard (310 CMR 40.0191)
·	Notification of the Department of releases and threats of releases which require notification within two hours or 72 hours, including imminent hazards; in addition to any notifications required under other authorities (310 CMR 40.0300)
·	Immediate Response actions at sites where a release or threat of release requiring notification within two or 72 hours has occurred, including provisions for notifications, plans and approvals (310 CMR 40.0404-40.0429)
·	Risk characterization procedures and achievement of response action outcome (310 CMR 40.0900 and 40.1000), except the submittal of response actions outcome statements is not required; For licensed hazardous waste landfills, closed hazardous waste landfills, permitted solid waste landfills, and closed solid waste landfills, these requirements apply only outside the boundary of the landfill
·	Public involvement activities and technical assistance grants; including notifications of the Chief Municipal Officer and Board of Health about imminent hazards, response actions for imminent hazards, completion of any phase of a response action, field work involving remediation, and field work involving Level A, B, or C personal protection or involving residential properties. Additional public involvement activities are required for Public Involvement Plan sites (310 CMR 49.1400)

July 1, 1994